



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED

09-15-06
04:59 PM

Order Instituting Rulemaking to Implement
the Commission's Procurement Incentive
Framework and to Examine the Integration
of Greenhouse Gas Emissions Standards into
Procurement Policies.

R.06-04-009

**REPLY COMMENTS OF LS POWER
GENERATION, LLC ON DRAFT WORKSHOP REPORT**

September 15, 2006

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I. INTRODUCTION

Pursuant to the August 21 and 28, 2006, Administrative Law Judge's Rulings and the August 21, 2006, directions by the Commission's Division of Strategic Planning ("DSP"), LS Power Generation, LLC ("LS Power") submits these comments on the August 21, 2006 Draft Workshop Report ("Draft Report") on Phase 1 issues regarding a greenhouse gas ("GHG") emissions performance standard ("EPS") in this proceeding. LS Power notes that several of the topics and principles discussed in the Draft Report have been the subject of LS Power's prior comments in this proceeding, including LS Power's pre-workshop and post-workshop comments filed on June 12, 2006 and July 27, 2006, respectively. Therefore, LS Power recommends that its comments on the Draft Report be considered in conjunction with its other comments.

LS Power continues to commend the Commission staff, including the DSP staff, for assembling into the Draft Report a detailed and comprehensive summary of issues and views relating to the structure and applicability of a GHG EPS.

However, since the Draft Report was issued, the California Legislature passed Assembly Bill ("AB") 32 and Senate Bill ("SB") 1368 on August 31, 2006. AB 32 and SB 1368 address and resolve several issues that arose in the course of this proceeding. As Governor

Schwarzenegger is unlikely to veto these bills, the bills will likely become law in the near future. When they do become law, the Commission will have to follow the legislative requirements in AB 32 and SB 1368. Accordingly, the comments below highlight some issues that may arise assuming the legislation is enacted.

II. REPLY COMMENTS ON DRAFT WORKSHOP REPORT

A. The 60% Capacity Factor Provided for in the Draft Report is Appropriate

LS Power supports the 60% capacity factor adopted in the Draft Report. However, this may become a non-issue as SB 1368, if signed by Governor Schwarzenegger, will establish the capacity factor at 60%. SB 1368 will resolve this issue by applying the EPS only to baseload generation, which is defined as “electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.” (SB 1368, new Public Utilities Code section 8340(a).) Accordingly, the Commission should retain its proposed 60% capacity factor.

Additionally, the 60% capacity factor is supported by virtually all other parties. The Green Power Institute (“GPI”) and the Division of Ratepayer Advocates (“DRA”) recommend a capacity factor of 50%. However, the DRA concedes that “[i]n the event the Governor signs SB 1368, then it appears that the issue will be resolved by Sections 8340 and 8341 of the Public Utilities Code, which would prohibit load serving entities from entering into long term financial commitments for baseload generation, defined as ‘generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.’” (Comments of the DRA The Phase 1 Issues Workshop Report at 4.) Accordingly, the Commission should adhere to its proposed 60% capacity factor.

B. The Commission Should Allow Renewable Resources to be “Firmed” by Non-Renewable Resources

While the Natural Resources Defense Council (“NRDC”) states in its Opening Comments on the Draft Workshop Report that “[b]lending absolutely should not be allowed,” LS Power respectfully disagrees. (NRDC Comments at 14-16.) Instead, LS Power supports Pacific Gas and Electric Company (“PG&E”) in its position advocating an exemption for “firmed” renewable commitments. (See PG&E Opening Comments on the Draft Workshop Report at 8.) Allowing non-renewable resources to serve as a back-up to RPS-eligible resources will allow for increased grid accessibility for renewable resources by removing operational hurdles for renewable resources. For example, as certain renewable resources are intermittent in nature, it is difficult for them to provide commercially “firm” products. However, by allowing a non-renewable resource to “firm up” renewable resources, these RPS-eligible resources will be more easily integrated into the system by having a dedicated resource to provide the firming services. This in turn will help California meet its RPS goals while creating an incentive for innovative renewable resource development that takes advantage of the fuel diversity possible, while maintaining system reliability through dedicated firming of intermittent renewables.

C. A Numerical Standard of 1,100 lbs CO2/MWh Should be Adopted for the EPS

The Commission should adopt a numerical standard of 1,100 lbs CO2/MWh for the EPS. The currently proposed number of 1,000 lbs CO2/MWh is too stringent and excludes crucial resources at the EPS gate. As demonstrated by multiple parties to this proceeding, existing CCGT facilities emit at a level above the proposed 1,000 lbs CO2/MWh.¹ As the new EPS is

¹ For example, as shown in data provided by the parties to the staff, as a class, CCGTs have emissions up to roughly 1,020 lbs CO2/MWh. Based on the mmBtus consumed by CCGTs in California in 2004 and 2005 as reported in the CEC Continuous Emissions Monitoring System (CEMS) database, CCGTs with capacity factors above 60% had

designed to set the bar at the level of a CCGT, it does not make sense to exclude the particular facilities around which the standard is based. Doing so could result in reliability issues, particularly where such assets can be positioned to provide competitive longer-term resource commitments to LSEs. Moreover, because of the significant CO₂ content differential between natural gas and coal, there should be room to allow for a higher EPS without concern that a new coal project could “slip under” this standard. Therefore, the proposed standard of 1,000 lbs CO₂/MWh is too low because it excludes contemporary CCGTs, and instead should be replaced with a standard of 1,100 lbs CO₂/MWh which will provide additional compliance flexibility, ensuring system reliability while preventing backsliding. A standard of 1,100 lbs CO₂/MWh will also allow cleaner technology resources to pass through the gate, thus encouraging low emission resource development.

D. Offsets and Reliability Exemptions Should be Allowed on a Case-by-Case Basis

LS Power continues to urge the Commission to adopt an offsets program for the EPS. Offsets provide flexibility in meeting emission goals regardless of the length of an adopted program, thereby improving system reliability and reducing costs for ratepayers. Offsets, including those secured from industries other than just the electric generating sector, should be permitted to allow for the most economic means of achieving compliance. This would be in the best interest of consumers from an economic, system reliability, and anti-backsliding perspective. Offsets would also spur broader innovation consistent with a market valuation of the GHG emission reductions. Therefore, LS Power urges inclusion of an offsets program with the EPS.

emissions as high as 1,006 lbs CO₂/MWh. Additional data from the CEC dating back to 2000 for all CCGTs in the WECC show several facilities with high capacity factors and with emissions rates higher than or close to 1,000 lbs CO₂/MWh.

LS Power supports the Draft Report and its support of a case-by-case exemption for resources needed for reliability purposes. According to Section 5(h) of the Draft Report, “[r]eliability exemptions may be permitted, and will be considered on a case-by-case basis.” However, in accordance with SB 1368, exemptions should not be limited to reliability, but should be considered on a case-by-case basis for significant economic impacts as well. According to SB 1368, which adopts PUC Code section 8341(d)(6),

(6) In adopting and implementing the greenhouse gases emission performance standard, the commission, in consultation with the Independent System Operator shall consider the effects of the standard on system reliability and overall costs to electricity customers.

Therefore, exemptions should be considered on a case-by-case basis for overall costs to electricity customers resulting from application of the EPS. Accordingly, the Draft Report should reflect the policy of SB 1368 and provide a case-by-case exemption for significant economic impacts, as well as reliability impacts.

III. CONCLUSION

LS Power provides these comments to assist in developing the record on the policy and implementation issues associated with the Commission's consideration of an interim GHG EPS. Any adopted EPS should be consistent with recently enacted AB 32 and SB 1368. Additionally, an interim EPS should use a 60% capacity factor, allow for blending of renewable and non-renewable resources, utilize a numerical standard of 1,100 lbs CO₂/MWh, allow for offsets, and allow for reliability and economic impact exemptions on a case-by-case basis.

Respectfully submitted,

September 15, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Reply Comments Of LS Power Generation, LLC On Draft Workshop Report* on all known parties to R.06-04-009 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses or who were unable to receive the e-mail transmittal were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on September 15, 2006 at Sacramento, California.

/s/

Eric Janssen

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September 15, 2006

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